**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE M.N.KRISHNAN**

**FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929**

**WP(C).No. 21556 of 2007(N)**
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**AGAINST THE ORDER IN IA 1146 2007 IN OS.581/2004 of MUNSIFF COURT, CHITTUR**
**.....**

**PETITIONER:**
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**N.K.SUBRAMANIAN, S/O.N.S.KRISHNA IYYER,**
**RESIDING AT PAZHAYAGRAMAM, NEMMARA VILLAGE,**
**CHITTUR TALUK, PALAKKAD DISTRICT.**

**BY ADV. SRI.V.CHITAMBARESH**
**SRI.T.C.SURESH MENON**
**SRI.JIBU P THOMAS**

**RESPONDENTS:**
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**M.P.SUDHAKARAN, S/O.PARAMESWARAN NAIR,**
**RESIDING AT PAZHAYAGRAMAM, NEMMARA VILLAGE,**
**CHITTUR TALUK, PALAKKAD DISTRICT.**

**BY**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**M.N. KRISHNAN, J.**

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**W.P.C. NO. 21556 OF 2007**

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**Dated this the 13th day of July, 2007.**

**J U D G M E N T**

This writ petition is filed seeking to set aside the observations made by the Court below while dismissing I.A.1146/07. The present writ petitioner wants measurement of the property to be done with reference to old survey records as well. I am informed that subsequent to the passing of the order the Commissioner has filed a report basing on the new resurvey sketch. In all cases one cannot hold that reference to old resurvey sketches will not be necessary at all. Therefore, the observations made by the Court that "Apart from all this, considering the relief claimed in the suit, it is not all required to measure the property on the basis of old survey records" cannot be said to be correct. When an application for remitting or setting aside the Commissioner's plan and report is filed and materials are furnished by the party which convinces the Court that the old survey records are also necessary for a proper and

appropriate determination, then necessarily the Court has to follow the same. Therefore, just because the Court has made an observation in its order, it shall not be used as a ground to reject the contention if really it arises for consideration on a subsequent stage of the suit.

With this observation the writ petition is disposed of.

**M.N. KRISHNAN, JUDGE.**

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